

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Civil No. 1:21-cv-796

SUPPLEMENTAL DECLARATION OF LISA NEWMAN

Pursuant to 28 U.S.C. § 1746, I, Lisa Newman, hereby declare:

1. I am an attorney in the U.S. Department of Justice, Civil Division, Federal Programs Branch. I am assigned to represent the United States in the above-captioned case. The statements made herein are based on my personal knowledge, and on information made available to me in the course of my duties and responsibilities as Government counsel in this case.

2. I submit this declaration in support of the United States' concurrently filed Reply Memorandum in Support of Emergency Motion for a Temporary Restraining Order or Preliminary Injunction.

3. Filed herewith as United States' Exhibits 1-2 are true and correct copies of the following documents that I downloaded from the indicated websites:

Exhibit No.	Exhibit Name
1	Alan Braid, <i>Opinion: Why I Violated Texas's Extreme Abortion Ban</i> (Sept. 18, 2021), https://www.washingtonpost.com/opinions/2021/09/18/texas-abortion-provider-alan-braid/

2	Kurtis Lee & Jaweed Kaleem, <i>The New Texas Abortion Law Is Becoming a Model for Other States</i> , LOS ANGELES TIMES (Sept. 18, 2021), https://www.latimes.com/world-nation/story/2021-09-18/texas-abortion-united-states-constitution
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I swear under penalty of perjury that the foregoing is true and correct. Executed on September 30, 2021, in Washington, D.C.

/s/Lisa Newman
LISA NEWMAN

Counsel for the United States

EXHIBIT 1

Opinions Editorial Board The Opinions Essay Global Opinions Voices Across America Post Opinión D.C., Md. & Va.

Opinion: Why I violated Texas's extreme abortion ban



Left: On Nov. 20, 1971, demonstrators demanding a woman's right to choose march to the U.S. Capitol for a rally seeking repeal of antiabortion laws. (AP) Right: On Sept. 11, 2021, abortion rights activists rally at the Texas State Capitol in Austin. (Jordan Vonderhaar/Getty Images)

Opinion by Alan Braid

September 18, 2021 at 4:01 p.m. EDT

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Alan Braid is a physician who provides abortion care in San Antonio.

▶ 0:00/6:45

Newly graduated from the University of Texas medical school, I began my obstetrics and gynecology residency at a San Antonio hospital on July 1, 1972.

At the time, abortion was effectively illegal in Texas — unless a psychiatrist certified a woman was suicidal. If the woman had money, we'd refer her to clinics in Colorado, California or New York. The rest were on their own. Some traveled across the border to Mexico.

At the hospital that year, I saw three teenagers die from illegal abortions. One I will never forget. When she came into the ER, her vaginal cavity was packed with rags. She died a few days later from massive organ failure, caused by a septic infection.

In medical school in Texas, we'd been taught that abortion was an integral part of women's health care. When the Supreme Court issued its ruling in *Roe v. Wade* in 1973, recognizing abortion as a constitutional right, it enabled me to do the job I was trained to do.

For the next 45 years — not including the two years I was away in the Air Force — I was a practicing OB/GYN in Texas, conducting Pap smears, pelvic exams and pregnancy check-ups; delivering more than 10,000 babies; and providing abortion care at clinics I opened in Houston and San Antonio, and another in Oklahoma.

Then, this month, everything changed. A new Texas law, known as S.B. 8, virtually banned any abortion beyond about the sixth week of pregnancy. It shut down about 80 percent of the abortion services we provide. Anyone who suspects I have violated the new law can sue me for at least \$10,000. They could also sue anybody who helps a person obtain an abortion past the new limit, including, apparently, the driver who brings a patient to my clinic.

For me, it is 1972 all over again.

And that is why, on the morning of Sept. 6, I provided an abortion to a woman who, though still in her first trimester, was beyond the state's new limit. I acted because I had a duty of care to this patient, as I do for all patients, and because she has a fundamental right to receive this care.

I fully understood that there could be legal consequences — but I wanted to make sure that Texas didn't get away with its bid to prevent this blatantly unconstitutional law from being tested.

Though we never ask why someone has come to our clinic, they often tell us. They're finishing school or they already have three children, they're in an abusive relationship, or it's just not time. A majority are mothers. Most are between 18 and 30. Many are struggling financially — more than half qualify for some form of financial aid from us.

Several times a month, a woman confides that she is having the abortion because she has been raped. Sometimes, she reports it to the police; more often, she doesn't.

Texas's new law makes no exceptions for rape or incest.

Even before S.B. 8, Texas had some of the most restrictive abortion laws in the country. That includes a 24-hour waiting period, meaning a woman has to make at least two visits to our clinic. Ultrasound imaging is mandatory. Parental consent is required for minors, unless they obtain court approval.

And yet, despite the restrictions, we were always able to continue providing compassionate care up to the legal limit of 22 weeks. It meant hiring more staff, everything took longer, but we managed.

Until Sept. 1.

Since then, most of our patients have been too far along in their pregnancies to qualify for abortion care. I tell them that we can offer services only if we cannot see the presence of cardiac activity on an ultrasound, which usually occurs at about six weeks, before most people know they are pregnant. The tension is unbearable as they lie there, waiting to hear their fate.

If we detect cardiac activity, we have to refer them out of state. One of the women I talked with since the law took effect is 42. She has four kids, three under 12. I advised her that she could go to Oklahoma. That's a nine-hour drive one way. I explained we could help with the funding. She told me she couldn't go even if we flew her in a private jet. "Who's going to take care of my kids?" she asked me. "What about my job? I can't miss work."

I understand that by providing an abortion beyond the new legal limit, I am taking a personal risk, but it's something I believe in strongly. Represented by the Center for Reproductive Rights, my clinics are among the plaintiffs in an ongoing federal lawsuit to stop S.B. 8.

I have daughters, granddaughters and nieces. I believe abortion is an essential part of health care. I have spent the past 50 years treating and helping patients. I can't just sit back and watch us return to 1972.

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The new Texas abortion law is becoming a model for other states



Opponents of Texas' new abortion law protest outside the state Capitol building in Austin. (Jay Janner / Austin American-Statesman)

BY KURTIS LEE, JAWEED KALEEM

SEPT. 18, 2021 UPDATED 3 AM PT



The Republican lawmakers gathered around the marble table for the historic moment, watching as Texas Gov. Greg Abbott signed the strict abortion bill into law.

Several applauded, one pumped his fist. Abbott had finalized Senate Bill 8 — a piece of [Texas legislation that bans abortions](#) after six weeks of pregnancy and in effect blocks women's constitutional rights to the procedure established under Roe vs. Wade in 1973.

For the record:

12:46 p.m. Sept. 24, 2021 An earlier version of this post said that, under Texas' new law restricting abortions, private individuals who sue could receive up to \$10,000. They can receive at least \$10,000.

“Millions of children lose their right to life every year because of abortion,” Abbott said staring into a camera in May. “In Texas, we work to save those lives.”

The ripple effects from that moment — and the law’s creative workaround method that involves using the threat of civil lawsuits against seemingly anyone involved in or aware of any step of an abortion — have reached far beyond the borders of the traditionally red state of Texas. The U.S. Supreme Court on Sept. 1 voted not to block the Texas measure, which went into effect that day and prohibits most abortions.

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Now, legal scholars fear that the law in Texas will lead to a rush of similar efforts in other states, prompting local legislators to pursue new measures on gun rights, immigration and other divisive political issues, all in an effort to sidestep the federal government.

From the Deep South to the Upper Midwest, legislators in many conservative states have started to explore how similar laws could be put in place in the months ahead. Some ideas that were percolating before the Texas measure are likely to gain momentum.

“What a law like that in Texas is doing is empowering people to use civil litigation to fight cultural and social grievances,” said David Noll, a law professor at Rutgers University.

Critics of Senate Bill 8, including the Biden administration, which is [suing the state of Texas](#) to halt the abortion measure, have assailed it as a clear violation of the Constitution. Roe vs. Wade, which allows abortions until about 24 weeks of pregnancy, remains the law of the land.

In its 5-4 majority decision in the Texas case, the Supreme Court said that [it was not ruling on the constitutionality](#) of the state law, but that an emergency attempt to stop it by abortion providers had not succeeded in its challenge. Members in the court’s minority in the ruling called the Texas measure unconstitutional and dissented that it could have been blocked pending appeals.

The new Texas legislation allows individuals to sue abortion providers or anyone who “aids and abets” in the process — a broad category that could include, say, someone who drives a woman to an appointment — for at least \$10,000.

“This kind of scheme to nullify the Constitution of the United States is one that all Americans, whatever their politics or party, should fear,” U.S. Atty. Gen. Merrick Garland, who is leading the effort to halt the law, said. “If it prevails, it may become a model for action in other areas, by other states, and with respect to other constitutional rights and judicial precedents.”

Florida Gov. Ron DeSantis, a Republican, said this month he would “have a look” at whether a Texas type of abortion law could apply in his state. And South Dakota Gov. Kristi Noem, also a Republican, said she felt emboldened to explore tightening abortion restrictions in her state.

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Legislators in Mississippi and Arkansas have expressed intentions to pass similar laws, and in Missouri, state Rep. Mary Elizabeth Coleman has made the topic one of her top legislative efforts.

Coleman was behind a 2019 law that banned abortions after the eighth week of pregnancy, but is currently unenforced amid a federal court challenge by Planned Parenthood. Still, the state is among the most restrictive when it comes to abortions. Only a single clinic in St. Louis offers the procedure.

“We have to do anything we can to eliminate abortion, which is the moral wrong of our generation,” said Coleman, a Republican, who was elected in 2018 to represent a district southwest of St. Louis.

Coleman plans to file the bill in December or January, and she hasn’t decided on how much it will allow in monetary damages.

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The implications of such efforts, some of which preceded Texas' legislation, go beyond the issue of abortion.

This summer Coleman and other lawmakers in Missouri passed legislation that allows individuals to sue police departments that enforce federal gun laws that are not already written in state law. A federal law, for example, bans people convicted of particular domestic violence crimes from having guns. Opponents of the new Missouri law have said it could keep police from taking away firearms from state residents found guilty in domestic violence cases.

The bill, signed by Republican Gov. Mike Parson, says that laws "that infringe on the people's right to keep and bear arms as guaranteed by the 2nd Amendment ... must be invalid in this state."

In Tennessee, lawmakers passed a bill this year that facilitates employees, students and parents in suing for the "psychological, emotional, and physical harm suffered" if a school lets a transgender individual in a bathroom when there are other people in it. The law requires schools to make a "single-occupancy restroom or changing facility" available for transgender people.

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Meanwhile, in Kansas, a new measure involves lawsuits over mask requirements and other public health measures related to COVID-19. The law, implemented this year, permits people to go to court over mandates on face coverings, business operation restrictions and limits on the sizes of public and religious gatherings.

And, last year, Utah lawmakers passed a pornography bill that allows individuals to sue websites that don't have ample warning explaining how "obscene materials" affect minors. Pornography companies have protested the rule, saying it's a violation of constitutional free speech rights.

Some conservative activists and politicians behind the Texas law say they are using tactics similar to those used by liberals on issues like immigration.

They have pointed to the "sanctuary city" movement, in which cities, mostly run by Democrats, have declared themselves to be friendlier toward immigrants because their law enforcement officers will not cooperate with federal immigration authorities by turning over individuals without proper legal documents who are in local jails. A key difference, however, is that sanctuary city declarations do not invite civil lawsuits by private parties who are uninvolved in immigration matters.

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In addition, conservative activists have argued that they've modeled the Texas abortion bill on federal environmental and disability laws.

For decades, citizens have sued over public accommodations that don't adhere to guidelines that allow access for people who are disabled. Many legal experts say those kinds of suits are not the same, however, because they typically require a person who files it to show how they have been harmed. Under the Texas law, any individual can sue.

New York state Sen. Zellnor Myrie, a Democrat who opposes the Texas measure, said in an interview that there are circumstances in which challenging federal laws make sense.

Myrie was behind a new law in the state that as of this summer allows people to file legal challenges against gun manufacturers for violence from firearms that were illegally smuggled into the state, bypassing broad immunity from suits that is given to those same manufacturers under federal law.

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“Texas’ new law is ingenious in its cruelty, depriving women of needed reproductive health care and turning ordinary people into bounty hunters against their neighbors,” Myrie said. “Texas’ law obliterates an entire set of healthcare services and options, whereas in New York, responsible gun companies have nothing to fear from our new law — they don’t need special protection from lawsuits.”

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Kurtis Lee

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Kurtis Lee is a national correspondent for the Los Angeles Times. He writes news features, narratives and profiles on an array of topics — race, criminal justice, immigration, income inequality, the 2nd Amendment. He won first place in the 2020 National Headliner Awards for his series of stories about the COVID-19 pandemic on the Navajo Nation. Lee has filed reports from the unrest in Ferguson, Mo., and chronicled Donald Trump’s rise to the presidency. Prior to joining The Times in August 2014, Lee worked at the Denver Post where he covered state and national politics. He’s also reported from the scenes of destructive wildfires and mass

shootings and was a member of the Post staff that won the 2013 Pulitzer Prize for breaking news coverage of the Aurora theater shooting. He's a graduate of Temple University.



Jaweed Kaleem



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Jaweed Kaleem is a national correspondent at the Los Angeles Times, where he writes about the people and places that make up the U.S. outside of California. His journalism frequently explores religion, race, politics and cultural debates.

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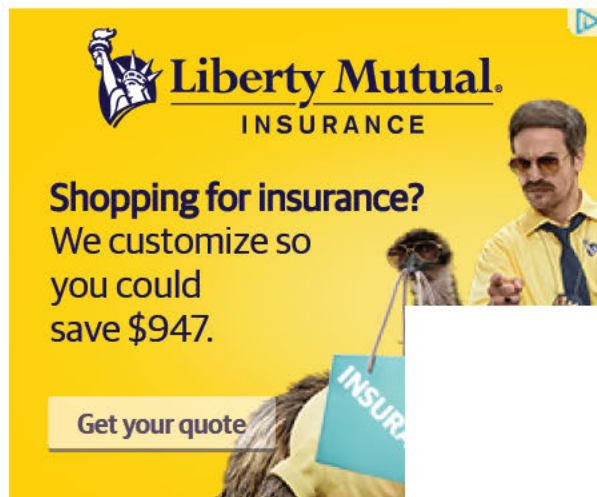
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